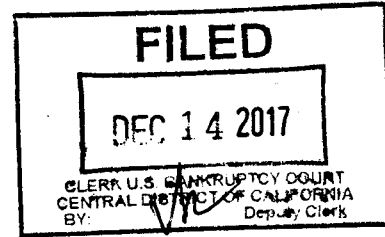


1 Kendra Pearsall  
2 14501 County Rd. 3  
3 Longmont, CO 80504  
4 Telephone: 970-673-7484  
5 Email: drpearsall@gmail.com  
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**UNITED STATES BANKRUPTCY COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
(SANTA ANA DIVISION)**

In Re: ) Chapter 11 Case No. 8:14-11492-ES  
THE TULVING COMPANY, INC., )  
Debtor ) DECLARATION OF KENDRA PEARSALL  
IN OPPOSITION TO THE CHAPTER 11  
TRUSTEE'S MOTION TO APPROVE  
SETTLEMENT AGREEMENT DOCKET 724  
ON 12/14/2017.

*received in mail  
opt'd filing bel  
on 12/14/17  
CSH*

*original not signed*

1 I, Kendra Pearsall, declare as follows:

2 1. I am Tulving creditor who is filing this Object on behalf of myself and 60 Tulving  
3 creditors who have signed a letter that we oppose the proposed **SETTLEMENT**  
4 **AGREEMENT DOCKET 724** that will go before the judge on 12/14/2017.

5 I have reviewed Trustee Weneta M. A. Kosmala's proposed Settlement Agreement with the  
6 Gugasians, which would let them pay \$648,250 to settle the \$2.1M lawsuit against them.

7 2. We disagree with the settlement for the following three reasons:

8 First reason to object, Ms. Kosmala believes that the Settlement Agreement she  
9 signed *would not generate any cash distributions to creditors* but the creditors are the  
10 victims that deserve compensation.

11  
12 The cash that the estate has, and the money paid pursuant to the Settlement Agreement,  
13 would all go to the professionals (about \$1.2M). She believes that this outcome (compared  
14 to bringing this to trial) is in the best interests of the creditors.

15 How is it that all the money from the settlement going to attorneys that bill at \$900/hour  
16 benefits the creditors who have lost their entire life savings as a result of the Tulving fraud?

17 We have received 18% of our losses in error coins which can only be sold for 17% of what  
18 we are told they are worth which gives us a total payout of about 3% of what was stolen  
19 from us. We deserve far more than 3%. We do not agree with Ms. Kosmala when she states  
20 that all of the settlement money going to the professionals and none to the creditor victims  
21 is in our best interests. This settlement only benefits the attorneys.

22 On the other hand, if the Settlement Agreement is not approved, and the Gugasian lawsuit  
23 were to go to trial, the trial has the potential of bringing in an additional \$1.5M or so, most  
24 of which could and rightfully should go to the creditors.

25 The following is a true and correct email that I received from another co-creditor,  
26 Jerry Harpster: "*Here is the email I got from Great Collections regarding trying to sell the*  
27 *error coins. We were distributed error coins "valued" at \$22,872. The email from Great*  
28 *Collections stating they're worth about \$4,000 is below. "*

1 Math:  $4,000/22.872 = .17$  (.18 payout x .17 value = .03 or 3% recovery from what Tulving  
2 owes)

3  
4 ----- Forwarded message -----

5 From: "Ian Russell" <[ian@greatcollections.com](mailto:ian@greatcollections.com)>

6 Date: Nov 3, 2017 12:07 PM

7 Subject: Error Coins - GreatCollections

8 To: <[eutectica@peaksy.com](mailto:eutectica@peaksy.com)>

9 Cc:

10 Dear Jerry,

11 Thank you for your e-mail and listing of the error coins. In today's  
12 market, these coins are worth about \$4,000-\$5,000.

13  
14 To consign to our auctions, please use the attached consignment form.  
15 I've also attached our consignment instructions.

16 They are not something we would purchase outright, since the price  
17 guide values are so high - we prefer to auction them for clients so  
18 there is no confusion as to pricing.

19  
20 Sincerely,

21  
22 - Ian

23 Ian Russell, President

24 GreatCollections

25 Certified Coin Auctions & Direct Sales

26 Tel: 1.800.44.COINS (+1.949.679.4180)

27 E-mail: [ian@greatcollections.com](mailto:ian@greatcollections.com)

28 Website: [www.greatcollections.com](http://www.greatcollections.com)

Second Reason to Object: **There is a very good chance of winning if it goes to trial so why settle?**

The Motion for an order approving the Settlement Agreement points out that a court should consider 4 factors to determine the fairness, reasonableness, and adequacy of a proposed settlement agreement (the "Woodson Factors"). Those 4 factors are: [1] *the probability of success in litigation*, [2] *the difficulties, if any, to be encountered in the matter of collection*, [3] *the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it*, and [4] *the paramount interest of the creditors and the proper deference to their reasonable views in the premises*.

For #1, Ms. Kosmala states that she believes that "the Estate has viable claims against the Gugasians and there is a good likelihood of success." Presumably, this factor favors a trial.

For #2, Ms. Kosmala states that she "is not aware of any facts to indicate the uncollectibility of judgment(s) obtained", but does point out that the Gugasians would likely appeal any judgment(s), which would increase the costs of litigation and delay any recovery. This factor would seem to favor a trial as well.

For #3, Ms. Kosmala states that there may be complex forensic accounting issues (determining when The Tulving Company was insolvent), and that there would need to be significant additional discovery. She points out that a trial would incur large costs (she estimates \$100K-\$200K; the Gugasians believe it would be \$200K-\$300K), and that it would delay the closing of the Estate (especially if a judgment is appealed). My understanding is that the large costs would be borne by either the Gugasians or the bankruptcy professionals (depending on the outcome). We feel the Return on investment will justify the costs.

For #4, Ms. Kosmala points out that settling will allow final partial distributions for non-administrative claims (the professionals), and points out that the creditors received (or opted out of receiving) coins "valued at approximately 18.75% of their claims." To this we say the following:

1. The error coins we received worth "18.75% of the claim" in actuality can only be sold for

1 20% of what it supposedly is worth which brings our claim down to about 3% of the money  
2 we lost to Tulving.

3  
4 2. We would much prefer the potential of a cash distribution than receiving some coins that  
5 are hard to sell.

6 3. The attorneys and professionals in this bankruptcy have been billing at very high rates  
7 such as 900-\$1200/hr. which we feel is outrageous. The professional fees have eaten up  
8 most of the money that could have been given to the victims of this crime. If we have to  
9 settle for a recovery of only 3% on our investment, we feel that the Trustee should see if  
10 the current attorneys (or new attorneys) are willing to take this case on a 30% contingency  
11 **since there is a good chance of winning** the \$2.1 million settlement and the creditors  
12 would get the remaining 70%. The professionals will still receive a very high amount of  
13 funds, far more than the creditors, some of who lost their life savings.

14 4. EST. FEES/EXPENSES:

15 Professional	3/2014 through 1/2015	2/2015 through 10/2016	Total	Paid	Owed	Notes
16						BRG was
17						authorized
18						to be paid
19						\$86,470.0
20 BRG	\$200,203.	\$418,403.	\$618,606.6	\$32,864	\$585,742.6	5, but
21	19	44	3		3	received
22						\$32,864
23						(per <u>docket</u>
24						<u>637</u> ).
25 PSZ&J	\$245,394.	\$498,208.	\$743,602.3	\$107,763.	\$635,838.8	
26	31	05	6	54	2	
27 R. Todd	\$97,347.3					
28 Neilson	9	None	\$97,347.39	\$2,802.14	\$94,545.25	
Total	\$542,944.	\$916,611.	\$1,459,556.	\$143,429.	<b>\$1,316,126</b>	

1 89 49 38 68 .70

2 5. Third Reason to Object: If the Court approves the Settlement Agreement, it will likely leave  
3 many questions unanswered, that we creditors may wish to know.

4 We want to know the truth about what happened at The Tulving Company that caused all  
5 of us to suffer such tragic financial losses. The amount of the Settlement Agreement is less  
6 than the amount that the Gugasians apparently received just from the "Home Office" lease,  
7 which appears to be an altered photocopy of the signed apartment lease (e.g. not even  
8 signed by The Tulving Company), and an apartment that the Gugasian's associates lived in  
9 and apparently not used by The Tulving Company, therefore the Gugasians will get away  
10 with a profit on their fraudulent scheme.

11 Questions that need to be answered:

- 12 • Was the 2006 Home Office lease forged? If not, what explains it being identical to the  
13 2006 Residential lease, except "2110 1/2" (street address) changed to "2112 1/2"  
14 and Levon's initials added?
- 15 • Was the Home Office lease (that the Gugasians apparently got over \$800K for) ever  
16 used by The Tulving Company? If so, for what purpose?
- 17 • How were the \$12,500/mo 2006 residential leases fair market value? It appears that  
18 one was offered for \$5,500/mo, the other for \$1,850/mo, after the bankruptcy filing.
- 19 • Why were both the 2006 leases for exactly the same rent, whereas later the rents  
20 were different?
- 21 • Why were the 2006 leases made in the name "Tulving Corporation" -- a company  
22 name that never existed?
- 23 • Why was there a "For Lease" sign at the unused building (16th Street) in October,  
24 2011, in the middle of rent/expenses?
- 25
- 26
- 27
- 28

- 1 • Why was rent being paid for the 16th Street building before The Tulving Company
- 2 would be able to use it?
- 3
- 4 • What does the 2011 agreement state?
- 5
- 6 • Were the Gugasians partners of The Tulving Company per the 2011 agreement?
- 7
- 8 • Was David Seyller, the person who signed the 2011 leases, authorized to sign
- 9 leases?
- 10
- 11 • Why does it look like David Seyller's signature and initials were placed over
- 12 someone else's, for all 3 2011 leases?
- 13
- 14 • The 2011 office lease, effective January 1, 2011, was for \$30,000/mo. How come a
- 15 rent payment of \$12,000 was made on January 3, then payments of \$17,800 and
- 16 \$29,800 on February 1?
- 17
- 18 • How come the rent payment for the office went up 6% on October 12, 2011
- 19 (\$30,000 to \$31,800), when a rent increase wasn't due for another few months, and
- 20 should have been raised just \$1,000/mo?
- 21
- 22 • What was a plausible reason for reallocating the rents? The IRS scam theory doesn't
- 23 hold water.
- 24
- 25 • Is the Court aware that the actual value of the error coins that creditors received is
- 26 approximately 3% of what they are owed (compared to 18.75% that Ms. Kosmala
- 27 keeps mentioning to the Court)?
- 28

The vast majority of the facts stated by Ms. Kosmala appear to be true (such as the background of the case). So I will focus on the ones we see as concerning.

1 First, she states on page 7 line 16 that all 3 leases (office, apartment, home office)  
2 were "upon information and belief at fair market rates." **This is False.** The  
3 apartment lease started in 2006 at \$12,500/month plus tax/insurance (with a  
4 \$25,000 security deposit). Yet somehow in 2015, it was being listed (partially  
5 furnished and newly upgraded) at just \$5,500/mo (with a \$5,500 deposit). The  
6 "home office" lease was similar, being leased to The Tulving Company in 2006 for  
7 \$12,500/month but being offered in 2016 for \$1,850/mo. How in the world could  
8 \$12,500 in 2006 have been market rate if the apartment was then offered it for  
9 \$1,850 in 2016? The office lease of \$12,000 in 2008 appears to me to have been  
10 roughly market value at the time, but how could it have been fair market value if the  
11 rent of \$33K in 2014 was fair (per Levon's statement), and it was then offered in  
12 2015 for \$10K?

13 Second, Ms. Kosmala also states that Hannes Tulving was able to reduce his  
14 recognized income by \$200,000 in 2011 as a result of the "reallocated rents". That  
15 opens a can of worms: the original rent was heavily inflated (so it likely should NOT  
16 have been recognized as income), and half of the \$200,000 amount comes from the  
17 "home office" that Hannes Tulving was apparently not using at all (and should  
18 therefore not have to be reported as income). So it appears that the "reallocated  
19 rents" reduced Hannes Tulving's income to what it *should* have been reported as.

20 **Ms. Kosmala knew last year that the apartment she believes had a fair market**  
21 **value of \$12,500/mo in 2006 was on the market for \$1,850 last year.** She was  
22 also aware that the 2006 leases had identical rents (despite being apartments with  
23 very different values), and that the reason for the identical rents was that one of the  
24 leases appears to be an altered photocopy of the other (and if true, presumably  
25 forged). She also knew that the the Santaniellos (associates of the Gugasians) lived  
26 in the "home office" for years, making it dubious that The Tulving Company could  
27 have benefited from the apartment.  
28



1 6. We feel that there are other upsetting factors, such as the Trustee considered  
2 \$12,500 to be "market rent" for an apartment that was offered for \$1,850 a decade  
3 later), and we are concerned the settlement is not fair (from what is known, it  
4 appears that the Gugasians received about \$875,000 in rent just from the apartment  
5 that The Tulving Company apparently never used and did not even sign a lease for).

6 7. In summary, we creditors urge your Honor to consider our objection to the  
7 Settlement due to the fact that the likelihood of a judgment is in our favor if it goes to court  
8 which will give the creditors an increased chance at a higher recovery than the tiny 3%  
9 we've received and to allow the truth to come forth about the Gugasian possible fraudulent  
10 involvement with the Tulving Company that caused its demise.

11 8. See Attachment A for a list of the 60 creditors who support this Opposition.

12 I declare under penalty of perjury under the laws of the United States of America that  
13 the foregoing is true and correct. Executed this 4<sup>th</sup> day of December 2017 at Longmont, CO.

14  
15 \_\_\_\_\_  
Dr. Kendra Pearsall  
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**Attachment A**

**Names of Tulving Creditors who requested that their names be listed in the opposition to the settlement agreement along with their comments:**

- |                            |                                 |
|----------------------------|---------------------------------|
| 1. Kendra Pearsall         | 24. Terry E. Kinnamon           |
| 2. Thomas E. Ferg          | 25. Jennifer Reedy              |
| 3. Rick Leffel             | 26. Garry N Willit              |
| 4. P. Andrew Logan         | 27. Winton L. Weeber            |
| 5. William Graef           | 28. Walter Jaworski             |
| 6. Richard I. Karpay       | 29. Andrew Carl                 |
| 7. Scott Ziemke            | 30. Randolph C. Gill            |
| 8. Kenneth D. Porad        | 31. Ralph A. Weidler            |
| 9. John Wires              | 32. Tom Minasian                |
| 10. Rick Anderson          | 33. Fred Kodesch M.D.           |
| 11. John Misja             | 34. Bill Cicia                  |
| 12. Benjamin J. Grunwald   | 35. William P. Bengen           |
| 13. Donna Taubenslag       | 36. Friedhelm Ilse              |
| 14. Robert J. Chevako      | 37. Betty Harris                |
| 15. Radovan Rusimovic      | 38. Peter Stetson               |
| 16. Jerry Harpster         | 39. A.Gordon Reynolds           |
| 17. Scott Daudert          | 40. Heidi Weingart              |
| 18. Arnold Glenn           | 41. William M Williams          |
| 19. Ken Slpes              | 42. Fred Teal                   |
| 20. Richard Zorthian       | 43. Fred M Dycus                |
| 21. William G. Swigert     | 44. Amarjit Bahl                |
| 22. William Cosby          | 45. Eric Simonson               |
| 23. Peter H McCandless     | 46. Rick McKinniss              |
| 47. Ramachandra Paidi      | 55. Susan and Lawrence Thompson |
| 48. Douglas Fairclough     | 56. Yevgeniy Timoshenko         |
| 49. Nellie Barnes          | 57. Laszlo Szabo                |
| 50. Jesse E Smith, MD      | 58. Geoffrey M Hertel           |
| 51. Laszlo Szabo           |                                 |
| 52. Stan Debro             | 59. Charles Moseley             |
| 53. Bruce Fox              | 60. Charles M. Hobbs            |
| 54. Richard & Sharon Kirby |                                 |

**Comments from Creditors:**

I am not happy with any of the outcome thus far. The coins that I received are pretty much worthless as well pennies on the dollar at best. It seems the lawyers get all the money and leave us with nothing. Not fair justice at all!

John Misja

My sense is justice is not being served. Our system rewards those who work the system(read trustee attorney & Judge) and frankly I'm sick and tired of being presumed upon as one to pay their salary. --Rick Anderson

As jewelers, over the course of our careers we bought gold coins because of their intrinsic value. We shipped \$122,000 of gold coins to Tulving Company, who promised a check within 5 days.

The gouging legal fees, the lack of effort to recover monies for creditors, the giving away of private customer data from The Tulving Company to Great Collections, the continued misrepresentation of the value of the error coins, and now the effort to simply settle the Gugasian debacle begs to question how much more theft can occur in this case at the expense of creditors? We beg the court to review legal fees charged us. We ask the court to reiterate to the Trustee the importance and duty of informing creditors of ongoing efforts on our behalf.

We also beg the court to disavow this settlement with Gugasians. If creditors are to receive absolutely nothing with a settlement, it is therefore prudent to proceed with trial.

Jerry Harpster

Our legal system was created to protect the innocent. With this settlement, the innocent will have been ignored and the criminals rewarded. How are we to believe in a system that directly contradicts what it stands for? I agree at it is imperative that this proceed to trial, with lawyers that take it on a contingency so that we, the creditors, may recover something more than mere insults.

Heidi Weingart

It appears that the creditors will receive a negligible amount, while the remaining funds in the proposed settlement are sluiced into the hands of very well-paid attorneys. I have no expectation of "perfect justice", but the terms of the proposed settlement are typical of what is too often a self-serving legal system. This settlement proposal should be rejected.

William Williams

i tried to buy 25 thousand dollars worth of bullion coins, and got robbed. why is this so complicated to litigate? disapprove the settlement. sue and distribute the proceeds fairly.

eric simonson